Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Performance Measurements and Standards For Unbundled Network Elements and Interconnection	)))	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	))))	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	))	CC Docket No. 98-147
	)	
Petition of Association of Local Telecommunications Services for Declaratory Ruling	)))	CC Docket Nos. 98-147, 96-98, 98-141

REPLY COMMENTS OF WORLDCOM, INC.

Kimberly Scardino
Lisa Youngers
Karen Reidy
WORLDCOM
1133 19th Street, NW
Washington, D.C. 20036
(202) 736-6478 (voice)
(202) 736-6492 (fax)
Kimberly.Scardino@wcom.com

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I. SUMMARY OF COMMENTS

The states and competitors are united in their desire to have a comprehensive set of national ILEC performance measurements and standards that the states can supplement. Eleven state commenters support federal measurements only if the national metrics coexist with state measurement plans, which have been designed to capture problems unique to the competitive landscape of the state or region. WorldCom, the Competitor Coalition, XO Communications, Covad, Birch, Focal, McLeodUSA, TDS MetroCom, USLink, Madison River Communications, Comptel and ALTS all support federal measures so long as they serve as a baseline that the states can exceed.

Competitors and the states have demonstrated that the value of performance measurements and standards far outweighs ILEC reporting obligations.

The Commission should adopt WorldCom's proposed performance metrics and standards, which cover all functions of OSS and include all modes of entry, and require the ILECs to report their wholesale performance pursuant to the specific business rules proposed by WorldCom. Unlike the measurements included in the NPRM,[1] WorldCom's proposed measurements and standards represent the "best of the best" state measurements and are designed to capture operational impediments to competition that WorldCom and other competitors have actually experienced in the market.

The Commission should recognize SBC, Verizon and BellSouth's blatant attempt to eliminate the state performance measurements and standards so that their performance can go unchecked by regulators. The national measurements proposed by the BOCs are insufficient to assess the incumbents' compliance with the market-opening provisions of the Telecommunications Act of 1996. WorldCom's proposed measurements, on the other hand, which are supported by a variety of competitors, capture facilities and services that are "critical" to competition.

The FCC should develop a federal enforcement plan designed to compliment remedy plans already adopted in many states. A federal enforcement plan should include two main components: 1) an expedited Notice of Apparent Liability process that includes the payment of forfeitures for violation of the measures; and 2) an expedited Section 208 Complaint process that awards damages to affected carriers. The Commission should

[1] *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection, Notice of Proposed Rulemaking*, CC Docket No. 01-318 (rel. November 19, 2001) (NPRM or Notice).

also propose a model state remedy plan for states to adopt in instances where they have not addressed performance remedies.

II. THE ESTABLISHMENT OF FEDERAL METRICS

A. States and Competitors Agree that Federal Measures Should Be A Baseline That The States Are Free To Go Beyond

Every State Commission, NARUC, and nearly all CLEC commenters specifically asked the Commission not to adopt national performance measurements that supplant state metrics that exceed the federal plan. All agree with WorldCom that federal measures should serve as a baseline that the states may go beyond.

The three biggest states—California, Texas and New York—argue for the need for state measurements regardless of whether the FCC moves forward with the adoption of national measurements.[2] States with fewer resources like Missouri, Oklahoma, Minnesota and Oregon agree that the Commission should not attempt to preempt the state measurements.[3] Likewise, Florida, Ohio and Colorado support federal measurements

[2] Comments of California at p. 4 ("minimum national standards would allow states to continue implementing their own standards, to the extent that they exceeded the threshold set by national standards, tailored to the specific geographic markets in which they were developed."); Comments of the Public utility Commission of Texas at p. 3 ("the Texas Commission believes that action by the FCC that establishes consistent, minimum requirements or supplements the state plans will further facilitate competition, as long as the FCC ensures that any requirements it ultimately adopts are: 1) minimally, as stringent as the strongest state plans; and 2) do not preclude the states from adopting additional measures to the extent they are necessary."); Comments of the New York State Department of Public Service at p. 2 ("While development of a federal default (or minimum) program would be useful to ensure market openness in areas where state monitoring programs do not exist, such a federal program should not supersede state-developed programs, which represent best efforts to properly monitor and reward/penalize performance based on local market conditions.")

[3] Comments of the Public Service Commission of the State of Missouri at p. 6 ("As stated repeatedly, the MoPSC urges the Commission to develop standards that augment state and/or regional performance measurements, and not preempt state and/or regional standards. Any order adopting national performance measurements should be clear in its objective of providing a standardized list of performance measurements for those states that choose to enforce the national list or have not adopted their own standards; thus removing any opportunity for the ILECs to argue federal preemption over state and/or regional performance measurements; Comments of Oklahoma Corporation Commission at p. 3 ("While development of a federal program, if used as a default, would be useful to promote competition in areas where state monitoring programs do not exist, such a federal program should not preempt state-developed

only if they coexist with state measurement plans, which have been designed to capture problems unique to the competitive landscape of the state or region.[4] In addition, Virginia believes that the states are in the best position to assess the needs of ILECs and CLECs in their states.[5]

Competitors agree with the states that federal measurements should serve as a floor that the states may to go beyond. WorldCom, the Competitor Coalition, XO Communications, Covad, Birch, Focal, McLeodUSA, TDS MetroCom, USLink, Madison River Communications, Comptel and ALTS all support federal measures so long as they serve as a baseline that the states can exceed.[6] As Covad notes in its comments, the competitive industry is in complete agreement on this issue.[7] In adopting federal measurements, the Commission must not replace equally or more stringent state metrics

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programs, which represent best efforts of the affected carriers and regulators to properly monitor and reward or penalize performance based on geographically localized market conditions."); Comments of the Minnesota Department of Commerce, at p. 2 ("State concerns regarding service quality will vary from state to state. Any effort to develop national performance standards should preserve the ability of state commissions to address areas of particular concern in their states, and to set standards that may be stricter than those contemplated by national standards."); Reply Comments of the Oregon Public Utility Commission, dated February 4, 2002, at p. 1 ("the FCC should not preempt state efforts").

[4] Comments of The Florida Public Service Commission at p. 5 ("A set of broad minimum federal requirements, which states may augment and fine-tune to meet their particular needs, would be workable in our view. Such an approach would ensure that any national standards do not supplant the exacting efforts of the FPSC and other state commissions."); Comments of Public Utilities Commission of Ohio at p. 2 ("the substantial progress of State commissions should not be cast aside or sacrificed."); Comments of the Public Utilities Commission of Colorado at p. 2 ("The CoPUC urges this Commission **not** to adopt national standards and measurements—or otherwise to impose circumscriptions on state commissions—which have a preemptive effect.")

[5] *See* Comments of the Virginia State Corporation Commission Staff.

[6] WorldCom Comments at pp. 4-8; Joint Comments of Dynegy Global Communications, Inc., e.spire Communications, Inc., ITC^Deltacom, Inc., KMC Telecom, INC., Metromedia Fiber Network Services, Inc., Nuvox, Inc., Talk America, Inc., and Z-Tel Communications, Inc. ("Competitor Coalition") at p. 3; Comments of XO Communications at pp. 15-16; Comments of Covad Communications Company at pp. 27-31; Comments of Birch Telecom, Inc. at p. 15; Comments of Focal Communications Corporation, Pac-West Telecomm, Inc. and US LEC Corp. at pp. 4-5; Comments of McLeodUSA Telecommunications Services, Inc. at p. 6; Comments of TDS Metrocom, Inc., USLink, Inc., and Madison River Communications at pp. 4-5; Comments of the Competitive Telecommunications Association at p. 6; Comments of the Association of Local Telecommunications Services at pp. 17-18.

[7] Covad Comments at p. 27 ("It is important to note that the competitive LEC community is virtually unanimous in support of the efforts of numerous states to implement and enforce concrete and specific enforcement plans.")

and standards. Moreover, if the Commission moves forward with the adoption of national measures, it must make clear that it does not intend to supplant the strong state measures. WorldCom agrees with the Missouri Commission's request that the FCC make clear that it does not intend to preempt the states so as to eliminate "any opportunity for ILECs to argue federal preemption over state and/or regional performance measurements."[8] If the Commission does not make its intentions clear, SBC admits that it will interpret any state measure that is not included in the federal plan as "superfluous" and "not critical to competition."[9]

Unlike the state and CLEC commenters, SBC, Verizon and BellSouth urge the Commission to supplant the existing state performance plans with national performance measures.[10] The three incumbents LECs overlook the competitive need for robust performance measurements and standards and submit that the Commission's paramount goal in establishing performance metrics, standards and remedies should be deregulation and uniformity.[11] The Telecommunications Act of 1996 was enacted to promote competition and mandates that unbundled network elements be provisioned in a just, reasonable and nondiscriminatory manner. The Commission should not sacrifice the mechanisms the states have worked tirelessly to implement in an effort to appear "deregulatory." Rather, the Commission should recognize, as the state and CLEC

[8] Missouri Comments at p. 6.
[9] Comments of SBC Communications Inc. at p. 9 ("a decision by the Commission not to include a particular measurement on the list necessarily represents a determination that the measure is not critical to competition, and therefore is superfluous.")
[10] Verizon, however, acknowledges that the Commission may not have the authority or grounds to preempt state plans. Verizon Comments at pp. ii, 7, 47-51.
[11] *See* BellSouth Comments at ¶ 37. In contrast, Verizon concedes that the 1996 Act does expressly state that uniformity is a goal. Verizon Comments at p. 49.

commenters argue, that the state performance plans are critical to competition and should not be destroyed at the expense of the adoption of federal measurements. [12]

SBC, Verizon and BellSouth argue that, without preemption, federal measures would create an undue burden because they would add an additional layer of reporting on top of the state plans. The BOCs acknowledge that the federal measures would be similar, if not identical, to the state measures,[13] yet they fail to show how federal monitoring would significantly increase the amount of resources expended to collect and report the necessary data. Similarly, as SBC, competitors and the states point out, the state reporting requirements in each region are similar, if not identical. [14]

If the Commission were to preempt the current state plans with a less comprehensive federal plan,[15] it would increase the BOCs' ability to discriminate against competitors in areas not covered by the federal plan. For example, if the federal plan

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[12] *See* Texas PUC Comments at p. 2. ("The Texas Commission applauds uniformity and efficiency, but not as the expense of valuable tools that ensure a level playing field."); Ohio PUC Comments at pp. 2 & 5. (" . . . in pursuing [some degree of uniformity] the substantial progress of state commissions should not be case aside or sacrificed . . . The Ohio commission trusts and expects that the FCC will continue to ensure that the extensive and tedious work done by state commissions will not be obliterated or disturbed, but will be incorporated and preserved."); Colorado PUC Comments at p. 5 ("This Commission must preserve, not destroy, the capability of state commissions to identify and to address matters of state concern with respect to developing and fostering the growth of competition in the local exchange market within the state. To accomplish this goal, state commissions must remain free to adopt, and to enforce, state- and ILEC-specific service quality standards and measurements.")

[13] *See* BellSouth Comments at ¶ 37 ("State Commissions in BellSouth's region have already adopted measurements that area almost identical to ten of the twelve measurements tat are described in the Notice."); Verizon Comments at p. 6 ("Verizon already reports versions of all 12 of the measurements the Commission has proposed in one or more jurisdictions.")

[14] *See* SBC Comments, at p. 7 ("Many of the measures and sub-measures to which SBC is subject under one performance plan duplicate measures applicable under other plans."); *see also* California PUC Comments at p. 5 ("several [states] share the same set of performance measures and standards for the ILEC. Thus, the number of differing or conflicting standards to which ILECs are subject currently is not large, and not unduly burdensome.") There are some differences among the state plans, but as the Oklahoma Corporation Commission explains, the differences "reflect actual differences among the carriers' OSS systems, facilities and their regional markets . . . Variations in monitoring efforts between states should not be presumed to be inefficient or to create unnecessary regulatory burdens." Oklahoma Corporations Commission Comments at p. 3. *See also,* Texas PUC Comments at p. 4 (" . . . a particular product or element may be important to capture in one state but not in another . . . some [OSS] interfaces may simply be different from state to state.").

[15] WorldCom is not suggesting that the Commission has the authority or grounds to preempt state plans.

failed to include flow through performance, a metric that is not included in the Notice, competitors' orders could be subject to unnecessary manual intervention by the BOCs without any mechanism for the Commission or the relevant state commission to detect the problem. It is noteworthy that SBC failed to meet the flow through standard under the Texas performance plan for nine months last year.

If the Commission moves forward with select national measures that streamline, modify, or supplant the state measures, competition will undoubtedly suffer. The Colorado PUC leaves no doubt on its position with respect to this issue: "The FCC must understand and consider that it risks retarding the development of competition in the local exchange arena if state commissions cannot proceed to develop their own performance standards and measures without the cloud of preemption hanging over their heads."[16]

B. The Benefits of Measurements and Standards Far Outweigh Any ILEC Reporting Obligations

The states and CLECs agree that the competitive benefits derived from performance measurements and standards far outweigh the ILECs' reporting obligations. Because the states have been so active in developing and monitoring ILEC performance, they are well suited to judge whether the reporting requirements are furthering the competitive mandates of the 1996 Act. Indeed, of the eleven states that filed comments in this proceeding, *all* recognize the competitive importance of performance measurements and standards and argue for the need to have state specific measurements.[17] Moreover, the states explain that the Commission should not assume that variations between the states are inefficient or create unnecessary burdens.[18]

[16] Colorado Comments at p. 9.
[17] Missouri Comments at p. 2 ("the benefits of performance measurements, whether national, regional or state-specific, far outweigh any burdens imposed by the associated regulation of those measurements.");

It is clear from their comments that the states have given thoughtful consideration to the issue of whether the value of performance measurements outweighs the costs associated with reporting obligations. As WorldCom pointed out in its comments, numerous state commissions, after lengthy proceedings and workshops, mindful of the status of competition in their states and factoring in all the BOC arguments against reporting, have determined that the state plans are essential to the development of local competition in their state.[19] In particular, state commissions have determined that the overall costs of these plans, some of which, as the BOCs acknowledge, are born by the state commissions themselves in the establishment and enforcement of the plans,[20] are

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Oklahoma Comments at p. 3 ("Variations in monitoring efforts between the states should not be presumed to be inefficient or to create unnecessary regulatory burdens."); Colorado Comments at p. 7 (explaining that the Qwest regional approach to developing performance measurements has admirably harmonized the state performance standards and reduced regulatory burdens.); Minnesota Comments at p. 1 ("The use of unbundled network elements has served as one of the key ways to lower barriers to competitive entry."); New York Comments at p. 2 ("Variations in monitoring efforts from state to state should not be presumed to be inefficient or create unnecessary regulatory overheads….Differences among [the states] will likely remain only where such differences are truly relevant."); California Comments at p. 5 ("the number of differing or conflicting standards to which ILECs are subject currently is not large, and not unduly burdensome."); Texas Comments at p. 3 ("The Texas Commission is cognizant of the fact that too many measures may lead to overregulation and unnecessary cost restraints on the ILEC. To that end, the Texas Commission has worked to reduce the overall number of performance measurements and add additional measurements, only when an aspect of performance that is critical to meaningful competition, is clearly not being captured."); Florida Comments at p. 2 ("There is variability in the operations support systems and processes used by the various ILECs, which means that, at a minimum, the business rules may need to vary between ILECs."); Virginia Comments at p. 2 (discussing the value in industry collaboratives to develop measurements tailored to the competitive landscape of the state.); Ohio Comments (discussing Ohio Collaborative process); Oregon Reply Comments at p. 2 (noting that the burden associated with reporting must be weighed against the consequence of poor service quality.)

[18] *Id.*

[19] WorldCom Comments at pp. 8-10, Appendix A. *See* New York DPS Comments at p. 2 ("[T] he program in effect in New York reflects the parties' best collective judgment of what is necessary to ensure adequate service in New York's local market."); *see also*, Oklahoma Corporation Commission Comments at p. 2. ("We believe that Oklahoma's Performance Measurements reflect all parties' best collective judgment of what is required to ensure adequate service in this state.")

[20] *See* SBC Comments at p. 8; Verizon Comments at p. iii.

outweighed by the benefits of increased competition, including lower consumer prices and innovated product offerings.[21]

SBC, Verizon and BellSouth overlook the competitive benefits associated with performance reporting and dwell on the magnitude of the measures to which they are subject. Although the BOCs argue for uniformity and reduction in the number of agencies to which they must report, it is a less comprehensive plan they really seek. The BOCs true objective becomes apparent by their support for a drastically reduced number of measures for which they must report,[22] referring to the existing state plans as superfluous, complex, and difficult to administer.[23]

SBC is perhaps the most aggressive on this point. SBC baldly asserts the state metrics are "unnecessary and burdensome" and gauge functions that have little to do with CLECs ability to compete effectively.[24] In light of the magnitude of the problems that WorldCom has encountered with the operations support systems and processes employed by SBC, Verizon and BellSouth, WorldCom takes serious issue with the SBC's casual dismissal of the competitive impact caused by its poor performance. Every CLEC order that is delayed results in lost revenue, lost good will and puts the CLEC at a competitive disadvantage vis-à-vis the ILEC.[25]

All of the BOCs have an interest in eliminating their reporting obligations because when measurements are eliminated, their performance is not subject to scrutiny by any regulator. In fact, when a competitor receives poor performance in an area not covered by

[21] *See* Missouri PSC Comments at p. 2 ("[T] he benefits of performance measures, whether national, regional or state-specific, far outweigh any burdens imposed by the associated regulation of those measurements.)
[22] *See* SBC Comments at pp. 2 & 7; Verizon Comments at p. 9.
[23] *See* BellSouth Comments at ¶ 24; SBC Comments at p. 8.
[24] *Id*. at p. 8.

performance reporting, it forces the competitor to engage in a "he said, she said" debate with the incumbent, which is something that works in the ILEC's favor. Such a processs works in the ILEC's favor because the CLEC must prove with its own internal data that there was a failure with the ILEC's system or process, which is sometimes difficult to prove. Also, whenever there is a violation, the ILECs always attempt to minimize the problem, and then it is up to the regulator to decide whether a penalty is warranted. By then, the harm has already been done and no after-the-fact penalty will make the CLEC whole.

In addition, the BOCs want to get rid of as many measurements as they can get away with so they do not have to pay penalties for poor performance. Since 1999, SBC has paid over $104 million for poor wholesale performance to competitors. Appendix A, attached hereto, shows the penalties that SBC has paid for its continued violation of its merger conditions and failure to meet wholesale standards in Illinois, Michigan and Texas. As if the penalties are not enough, several of the Ameritech states and KPMG (the third party OSS tester) have come down hard against SBC for its failure to accurately report its performance to carriers each month.[26] Thus, SBC's interest in eliminating the number of performance measurements is readily apparent.

[25] *See* AT&T Comments at p. 39 ("CLECs must meet the needs of their customers, providing quality and timely products and services, or suffer the punishing consequences of lost customers and market share.")
[26] Based on several exceptions issued by KPMG, the Wisconsin Public Service Commission issued an Order Suspending Testing and To Show Cause, dated December 19, 2001 in Docket 6720-TI-160. Citing to KPMG's findings, the Wisconsin PSC stated, "[t]he problems with data retention, data integrity and performance measure replication identified in Exception 19 and 20 appear to be systemic and widespread, and affect a majority of the performance measures in the master test plan." Wisconsin PSC Order at p. 3. Exception 19 found that Ameritech does not have policies in place to retain raw data. Exception 20 identifies consistent and systemic problems in calculating performance measures and reporting data. Both Exceptions and other KPMG findings are available at http://www.osstesting.com/Exceptions.htm.

As WorldCom emphasized in its initial comments, we believe that national measures would go a long way at ensuring that the ILECs comply with their obligations under the 1996 Act.[27] From a practical perspective, however, WorldCom recognize the existence and value of the state measures. While we have an interest in developing national measurements, we have a greater interest in protecting the existing state measurements that we have worked tirelessly to develop across the country. The Commission has an interest in filling in the gaps of its current enforcement scheme and is struggling with a way in which to harmonize the existing state measurements with a federal enforcement plan. WorldCom offers the Commission a solution: adopt WorldCom's proposed measurements and standards, which are a compilation of the best state measurements, and order them as a minimum measure that the states are free to exceed. While WorldCom's proposed measurements cover all functions of OSS and include all modes of entry, they are not duplicative and will not result in unnecessary reporting by the ILEC. As discussed below, WorldCom's proposed measurements cover issues that we and other competitors have actually experienced in the market with various ILECs.

C. WorldCom's Proposed Measurements and Standards Are Critical to Competition

There is strong support for WorldCom's proposed measurements and standards. The Competitor Coalition, XO Communications, McLeod, Covad, ALTS and Comptel all support WorldCom's metrics.[28] As the Competitor Coalition points out, the WorldCom metrics and business rules, "were developed with input from a significant number of

[27] WorldCom Comments at p. 3.
[28] Competitor Coalition Comments at pp. 6-7; XO Comments at p. 11; McLeod Comments at p. 5; Covad Comments at p. 2, fn 3; ALTS Comments at p. 14; Comptel Comments at p. 10.

competitors, and appropriately and efficiently implement the intent behind the NPRM's proposed metrics."[29] In addition, XO is correct that "the WorldCom Measures will 'enable competitors, as well as the Commission, to detect potential violations' and anticompetitive behavior on the part of the ILECs—an important aspect of performance measurements previously espoused by the Commission"[30]

As WorldCom explained in its comments, the twelve measurements included in the NPRM do not cover key OSS functions that the Commission has highlighted as critically important to ensuring that CLECs can enter the market and sustain entry.[31] The Texas and Ohio Commissions agree that the metrics included in the NPRM are not sufficient and omit critical wholesale performance.[32] The Ohio Public Utilities Commission rightly points out that "the FCC's proposed national performance measurements are general and may not yield performance measurement results that can be meaningfully used to troubleshoot or improve an ILEC's internal processes, or to assure CLECs and State commissions that an ILEC is not discriminating against unaffiliated CLECs."[33]

Unlike the measurements included in the NPRM, WorldCom's proposed measurements and standards represent the "best of the best" state measurements and are designed to capture operational impediments to competition that WorldCom and other competitors *have actually experienced in the market*. WorldCom has concerns with the limited measures proposed by SBC, Verizon and BellSouth and we discuss the

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[29] Competitor Coalition at p. 7.
[30] XO Comments at p. 11 (citing the Non-Accounting Safeguards Order).
[31] WorldCom Comments at pp. 10-16 (noting the NPRM's exclusion of three key OSS functions—billing, change management and flow-through).
[32] *See* Texas Comments at pp. 5-10; Ohio Comments at p. 11.
[33] Ohio Comments at p. 11.

shortcomings of their proposals in Section III below. In addition, the ILECs' measurement business rules do not always provide a true picture of the provisioning process. For example, BellSouth does not begin measuring its Average Order Completion intervals until after the issuance of a firm order confirmation, which is sometimes days after a competitor submits the order. SBC does not disaggregate its query response times, which can vary widely by function. And, Verizon proposes a higher standard for preorder response times than it has agreed to in the states.

Specific Issues Raised by Parties Relating to WorldCom's Proposal:

UNE-P: The Commission must immediately dismiss SBC's request to exclude UNE-P performance from any federal measurements that are adopted. The Commission must recognize SBC's request as a blatant attempt to continue to provide poor wholesale performance to competitors without regulatory oversight.[34] As WorldCom explains above, in less than two and a half years, SBC has paid over $104 million for poor wholesale performance to competitors, which includes SBC's failure to meet wholesale standards in three states in which MCI offers UNE-P: Illinois, Michigan and Texas. Moreover, KPMG and the Wisconsin Commission have cited SBC for its failure to accurately report its performance to carriers each month.[35] Thus, SBC's interest in eliminating the number of performance measurements is readily apparent.

[34] Since this proceeding is not about the availability of UNE-P or other unbundled network elements, WorldCom will not address the availability of UNEs here. Rather, WorldCom will address the issue in the Triennial Review, CC Docket No. 01-339.

[35] Based on several exceptions issued by KPMG, the Wisconsin Public Service Commission issued an Order Suspending Testing and To Show Cause, dated December 19, 2001 in Docket 6720-TI-160. Citing to KPMG's findings, the Wisconsin PSC stated, "[t]he problems with data retention, data integrity and performance measure replication identified in Exception 19 and 20 appear to be systemic and widespread, and affect a majority of the performance measures in the master test plan." Wisconsin PSC Order at p. 3. Exception 19 found that Ameritech does not have policies in place to retain raw data. Exception 20 identifies consistent and systemic problems in calculating performance measures and reporting data. Both

WorldCom agrees with the Texas Commission that the omission of UNE-P measures from a federal plan would "have a chilling effect on a significant segment of the competitive market."[36] As the Texas Commission explains:

> In Texas, over seventy percent of the access lines that are served by CLECs are provided via resale or UNE-P. By not including these products within the proposed measurements, ILECs may be relieved from providing adequate service in these important areas. ILECs may be able to concentrate on facilities based entry to the detriment of other entry mechanisms specifically provided for in the Act. Accordingly, the Texas Commission urges that any performance measurements that are established should include measurements designed to capture performance for UNE-P and resale.[37]

There is no support in the record to exclude UNE-P from a federal measurement plan.

xDSL LOOPS: The metrics proposed by Covad to measure xDSL loop performance are not that dissimilar from WorldCom's proposed measurements. Moreover, Covad's proposed standards for xDSL and line-shared loops are identical to the benchmarks proposed by WorldCom.[38] Through its acquisition of key DSL assets from Rhythms, WorldCom now offers DSL service using dry copper loops and line-shared loops in 31 markets across the United States. Like Covad, WorldCom has an interest in national measurements and standards for the delivery of xDSL and line-shared loops. Covad is correct that "[w]ithout a federal rule requiring incumbent LECs to provide a loop in a certain, predictable period of time, competitive LECs are severely hampered in their efforts to compete effectively in the broadband marketplace."[39]

Exceptions and other KPMG findings are available at `http://www.osstesting.com/Exceptions.htm.`

[36] Texas Comments at p. 5.

[37] *Id*. at pp. 5-6 (footnote omitted).

[38] Both Covad and WorldCom proposed a three-day interval for DSL loops and a one-day interval for line sharing. Covad Comments at pp. 21-26; WorldCom Comments at Appendix B, Attachment A.

[39] Covad Comments at p. 9.

Covad's comments adequately justify the need for xDSL measurements and include sufficient support for the Commission to order the provisioning intervals proposed by Covad and WorldCom.

Like Covad, the Texas Commission explains that without sufficient performance measurements for xDSL loops, the ILECs will have "little incentive to provide sufficient wholesale service to CLECs."[40] In arguing for the need for xDSL measurements, the Texas Commission states:

> It has been our experience in Texas that SWBT's performance results for several of the xDSL-related measurements have consistently failed to meet the appropriate benchmark or parity standard (as currently defined). The Texas Commission has continually monitored the situation in an attempt to improve SWBT's overall performance or to understand the changes required to allow the performance measurement to better assess SWBT's service to its wholesale xDSL customers. Without inclusion of those measurements, however, the Texas Commission may lack sufficient information to address these performance issues. Accordingly, we believe it is important that the FCC include xDSL-capable loops in any measurements that it ultimately adopts.[41]

WorldCom agrees with Covad and the Texas Commission that any federal measurements must appropriately capture xDSL loop performance.

LACK OF FACILTIES: Mpower and Focal both propose federal measures that capture issues relating to orders delayed or cancelled due to lack of facilities.[42] Two of WorldCom's proposed measurements capture issues with lack of facilities. WorldCom's Percent Orders Completed On Time (#14) and Percent of Orders Held > 5, 15, 30 Days (#17) measures both break out orders not completed on time or held due to the lack of facilities.[43]

[40] Texas Comments at p. 6.
[41] Texas Comments at p. 6.
[42] Mpower Comments at pp. 12-15; Focal Comments at pp. 44-57.
[43] See WorldCom Comments, Appendix B, measurement numbers 14 and 17.

BENCHMARKS: The ILECs have proposed to include statistics, as opposed to the benchmark-only plan advocated by WorldCom and other CLECs. The use of statistics only adds complexity to plans. Not only do clear bright line benchmarks make plans simpler to administer and audit, the use of benchmarks avoids the need for complicated statistical methodologies. Moreover, benchmarks enable CLECs to enter into Service Level Agreements with their customers.

The General Services Administration's comments underscore the need for benchmarks in winning customers: "Contracts between carriers and end users often specify the performance levels that must be met for the covered service. Thus, carriers depending on UNEs to provide services under contracts must receive predictable performance levels in order to successfully on contracts and fulfill their obligations if they receive awards."[44] As an example, GSA highlights its government-wide video procurement called Connections that requires the successful vendor to install fiber optic facilities in 10 working days, among other requirements.

WorldCom does not oppose the use of a small sample size table when perfection would be the only way to meet the benchmark.[45] The small sample size table should allow one miss per sample size so that if there were 10 items and a 95% standard, one item could be missed without penalty even though the result would be 90% performance.

WorldCom's biggest concern with the use of statistics is that it has been our experience in the states that the Bell Companies often misuse statistics to gain relief for failures where they would have otherwise paid penalties. In other words, the BOCs use statistics to turn parity misses into performance compliance. Much has transpired on the

[44] Comments of General Services Administration at p. 5.
[45] *See* BellSouth's Comments at p. 86.

state level regarding statistics. WorldCom believes the best approach is for the Commission to order benchmarks tied to the measures. If the Commission moves with forward with parity standards and decides to use statistics, WorldCom proposes that the Commission hold a statistics workshop so that statistics are used appropriately.

In sum, WorldCom's proposed measurements capture facilities and services that are "critical" or "vital" to competition, which is the standard that both SBC and Verizon proposed as the test for adoption of a measurement.[46] Moreover, WorldCom's proposed measures are supported by various parties and address most of the concerns expressed by competitors in their comments.

D. An Appropriate Enforcement Plan Is Necessary To Deter Poor Performance

WorldCom agrees with the comments of AT&T and the Competitor Coalition that, while the Commission should do nothing to change state remedy plans that have already been established, there is "considerable value" in using the FCC's enforcement authority to support those state efforts and force the ILEC's to comply with the nondiscrimination obligations of the Act.[47] As such, the FCC should develop a federal enforcement plan designed to compliment remedy plans already adopted in many states. The Commission should also propose a model state remedy plan for use by states that have not adopted their own performance penalty plans.

1. Federal Enforcement Plan

As many commenters noted, to be effective, a remedy plan must swiftly punish anti-competitive behavior and enable customers to seek restitution and other remedies

[46] SBC Comments at pp. 7-8; Verizon at p. 7.
[47] AT&T Comments at p. 28; Competitor Coalition Comments at pp. 12 –13.

through the Commission and/or the courts. WorldCom is in agreement and encourages the Commission to consider a remedy plan, with two main components, forfeitures (fines paid to the U.S. Treasury) and damages (payments to carriers) in order to accomplish these objectives.[48] As explained below, the forfeitures should take into account the magnitude of the violation and the duration of the problem.

a. *Notice of Apparent Liability and Forfeitures*

As noted by various parties,[49] an enforcement plan should include, in part, forfeitures, payable to the U.S. Treasury, pursuant to Title V of the Act. WorldCom suggests that one way a forfeiture-based enforcement plan could be implemented is that in the monthly aggregate performance reports ordered pursuant to this proceeding ILECs would indicate or flag whether any performance standards had been missed for any class of customer. As stated by ALTS, one or more missed metrics, either three months in a row, or three out of six months, should trigger an expedited process for an FCC finding of liability and a requirement that the ILEC pay a fine to the U.S. Treasury.[50] As a first step in this expedited process, the Commission would automatically issue a notice of apparent liability (NAL) and an order to show cause. The NAL would identify each missed standard and each instance of discriminatory treatment both by class of customers and by circuit type. The NAL would also propose a specific penalty for each flagged miss. Additionally, if the ILEC's performance report revealed a carrier-specific violation of a performance standard, or if the carrier sought to challenge the accuracy of the ILEC-

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[48] *See* XO Communications Comments at p. 20; Competitor Coalition at pp. 13 & 19, ALTS Comments at pp 8-9.

[49] AT&T comments at p. 28; XO Communications Comments at p. 20.

[50] ALTS Comments at p. 10. WorldCom believes both chronic and extended chronic misses (where a submeasure was missed five out of the last six months) should result in unique penalty payments. WorldCom also believes severe misses should also result in penalty payments beyond the ordinary levels. More detail of WorldCom's proposal is included in Appendix B, attached hereto.

provided data, an individual carrier would have the option of asking the Commission to issue an NAL and show cause order

The order to show cause would direct the ILEC to demonstrate why: (1) the Commission should not find that the ILEC has violated the Commission's rules and the statute; and (2) the ILEC should not be required to come into compliance with the Commission's performance requirements within 30 days. The order would provide the ILEC with 15 days to respond to the NAL, and would allow carriers 7 days to reply to the ILEC's response. The order would also state that the ILEC bears the burden of demonstrating that its poor or unreasonably discriminatory performance was justified. This burden would be extraordinarily heavy. That is, absent a catastrophic event, the Commission would find that the ILEC has violated the Commission's rules and the statute.

Within 30 days of the ILEC's response to the NAL, assuming that the LEC has not been able to overcome the presumption of liability, the Commission would issue an order stating that the ILEC has violated the Commission's rules and the Telecommunications Act of 1996, and therefore must pay the prescribed forfeiture to the U.S. Treasury. As many carriers noted,[51] and even the Commission has recognized,[52] any penalties associated with performance metric violations must be substantial enough to serve as an effective deterrent, and not be regarded by the ILEC as merely a "cost of doing business." The forfeiture must therefore exceed the benefit the ILEC reasonably could have expected to receive as a result of its poor performance or discriminatory

[51] *See e.g.,* XO Communications Comments at p. 21; WorldCom Comments at pp. 20 - 21.
[52] *NPRM* at ¶ 22 ("Given the importance of compliance with these rules in encouraging competition and avoiding scenarios where forfeitures are merely a cost of doing business, we seek comment on whether the base forfeiture amount should be the statutory maximum.")

behavior.[53] WorldCom agrees with commenters who recommend that the FCC adopt a base forfeiture amount up the maximum permitted under the statute.[54]

In addition, as described by various commenters, the amount of the prescribed forfeiture should be adjusted to reflect: (1) the magnitude of the missed performance, (*i.e.*, based on how far the ILEC's actual performance falls short of the metric standard); and (2) the duration of the ILEC's poor performance or discrimination.[55] Absent increased forfeiture amounts based on magnitude, the ILEC will have little incentive (indeed, it may have a disincentive) to meet its committed due dates once it determines that it is likely to miss a standard. Increased forfeiture amounts based on the duration of the miss ensure that consecutive periods of missed metrics result in progressively higher penalties.

b. *Expedited Section 208 Complaint Process and Damages*

WorldCom concurs that in addition to paying potential forfeitures, an ILEC should also be required to pay damages directly to individual carriers injured by poor performance or discrimination.[56] ILECs should be required to flag any missed performance standards for services provided to an individual carrier in the carrier-specific

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[53] Congress has long recognized that penalties levied on "highly profitable communications entities" (*e.g.*, incumbent LEC monopolies) must be substantial enough to be an "effective deterrent" of violations of the Act and the Commission's rules. *See* S. Rep. No. 580, 95th Cong. 1st Sess. 3 (1978), *reprinted in* 1978 U.S.C.C.A.N. 109, 111. S*ee also* H.R. Conf. Rep. 386, 135 Cong. Rec. H. 9333, 9454 (1989). In the past twelve months alone, SBC paid over $50 million to the U.S. Treasury for violations associated with the Ameritech merger conditions. *See SBC, Verizon Pay Millions in Fines,* National Journal's Technology Daily, January 2, 2002. This provides clear evidence of a BOC's willingness to buy its way out of local competition obligations to the detriment of competitors.

[54] ALTS Comments at p. 8. Moreover, WorldCom agrees with other commenters that there is a need for an increase in the FCC's forfeiture authority so the prescribed forfeitures have a meaningful impact, beyond the costs of doing business. XO Communications Comments at p. 22; Competitor Coalition Comments at p. 13; WorldCom Comments at p. 20, n. 45.

[55] ALTS Comments at p. 10 (noting that the forfeiture levels should be calibrated to correspond to the degree to which the ILEC's have missed the relevant standard and the degree to which the ILEC has missed the standard in the past); Competitor Coalition at p. 19; AT&T Comments at p. 30.

[56] *See e.g.* XO Communications Comments at p. 20; Covad Comments at p. 31.

reports. A carrier harmed by the ILEC's poor performance or discrimination should then be able to seek damages at the FCC.[57]

WorldCom suggests that the Commission consider an expedited complaint process that would work as follows. In the liability phase, a carrier would file a form complaint with the FCC specifying: 1) the ILEC at issue; 2) the period during which the violation occurred; 3) the performance standard that was missed; and 4) the product/activity volume involved. This complaint would be served simultaneously on the ILEC and the Commission. The ILEC would then have 10 days to answer. Identification of a missed performance standard or benchmark would create a rebuttable presumption that a violation of the Commission's rules had occurred and the ILEC would bear the burden of submitting evidence sufficient to overcome that presumption in order to avoid a finding of liability.[58] The Commission would have 30 days from the date the complaint is filed to issue an order resolving the liability issue. Once the ILEC's liability has been established, the carrier would file a damages claim based either on its own calculations or as defined by a proxy schedule developed by the Commission. The damages phase would also be conducted on an expedited basis, similar to timing of the liability phase. The Commission should also consider the following in its calculation of damages: the cost of the product, including lost profit, that the competitor purchased, the magnitude of the missed performance, and the duration of the ILEC's poor performance or discrimination.

[57] As noted by various parties, any enforcement mechanism adopted by the FCC in this matter should not preclude CLECs from bringing additional actions at the FCC, before he states, or in the courts either under the Act – such as section 208 complaints and similar state complaint actions – or pursuing other remedies pursuant to state or federal law. XO Communications Comments at p. 23; ALTS Comments at p. 11 (stating that in addition to FCC action the appropriate action may be to bring a tort, contract or antitrust claim in the appropriate court).

If the Commission adopts the expedited NAL and expedited section 208 complaint processes discussed by various parties and emphasized by WorldCom above, the arguments advanced by the ILECs to prevent the Commission from adopting any sort of meaningful enforcement plan are without merit. At the outset, the ILECs argue that any enforcement plan adopted by the Commission must ensure that the ILECs have the right to a hearing and are ensured their right to due process. Qwest, for instance argues that the Communications Act guarantees, "No monetary penalty will be actually demanded of a carrier unless full due process has been afforded in that particular instance.[59] Both the expedited NAL and section 208 complaint processes proposed above include an opportunity for the ILEC to be heard regarding any failure to meet performance standards.[60]

Verizon also expresses concern over an enforcement plan that forces the ILEC to overcome a presumption that a violation has occurred because the ILEC failed to meet a performance standard.[61] Verizon argues that they should have the right to rebut that presumption.[62] Both the expedited NAL and section 208 processes proposed above

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[58] The carrier would have the option, but not be required, to reply to the ILEC's answer. To avoid delay, such a reply would have to be filed within 5 days of the incumbent LEC's response.
[59] Qwest Comments at p. 25; *see also* Verizon Comments at p. 44; SBC Comments at 35.
[60] Pursuant to § 503(b)(4)(C), Verizon claims that a "reasonable period of time" for an ILEC to respond to an NAL "is ordinarily" 30 days. Verizon Comments at p. 44. WorldCom points out, however, that § 503(b)(4)(C) states that a party responding to a NAL must do so "within such reasonable period of time as the Commission prescribes by rule or regulation". Hence, it is perfectly reasonable for the Commission to require a 15 day period in which the ILEC would respond to a NAL, as proposed herein. Thirty days is not a requirement. Indeed, the Commission has given parties less time to respond to allegations of violations of Commission orders. For example, in March of 2000, during this Commission's investigation of alleged 271 backsliding the FCC gave Bell Atlantic-New York one week to answer interrogatories and provide requested documents as part of the Commission's investigation. *See* Letter, dated February 7, 2000, from David H. Solomon, Chief, Enforcement Bureau, to Edward D. Young III, Senior Vice President -- Regulatory, Bell Atlantic.
[61] Verizon Comments at p. 46.
[62] *Id.*

afford the ILEC that opportunity. Hence, Verizon's concerns are not valid and should not prevent the Commission from implementing an enforcement plan.

Finally, many of the ILECs take great pains to point out that the only way the Commission can enforce a payment for money through the NAL process is to go to federal district court and go through a lengthy trial de novo.[63] This argument does not work, however, because it is premised on the idea that the ILEC will refuse to pay any forfeiture imposed by the Commission in direct violation of a Commission order. This is a fairly bold proposition and somewhat unlikely. As with any Commission order, if a party fails to comply with a Commission order, the FCC has the authority to enforce its orders.[64] This ILEC argument should be rejected as nothing more than an attempt to scare the Commission away from implementing any sort of forfeitures or developing any sort of enforcement plan at all. Moreover, if the ILEC message is that they do not have any intention of complying with national performance standards or measures – before a plan is even developed -- then this highlights further the critical need for a national performance plan with meaningful enforcement that will help to develop local competition.

2. Model State Remedy Plan

Most state plans include both remedy payments to individual carriers (Tier 1) and the payments for non-compliance at the industry level (Tier 2). If a state remedy plan is in effect, then the federal enforcement plan still needs to include a process for CLECs to

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[63] Verizon Comments at p. 44; Qwest Comments at p. 26.

[64] *See* 47 U.S.C. § 403 (Commission has the power to enforce its own orders); 47 U.S.C. § 504(a) (Commission has the power to recover forfeitures – that are not paid to the U.S. Treasury -- through a civil action in district court). These processes are established to enable the Commission to enforce its orders, including orders directing payment for money, and in no way can be interpreted as limits on the Commission's authority, as the ILEC's contend. Qwest Comments at 29. There is no logical support for such a leap.

bring an expedited Section 208 complaint for damages and an additional forfeiture assessment for industry level non-compliance should it be justified.[65]

The FCC can also assist the states where no effective state remedy plan exists by recommending WorldCom's model remedy plan. If no state remedy plan is available, then the performance plan described in Appendix B, attached hereto, should be adopted by the state until the state has its own remedy plan in place. This will ensure that ILECs are properly motivated to meet federal service level standards. In addition, the FCC should continue to guide states on the key attributes of an effective remedy plan as it did in its New York 271 Order:

> [w] e believe that the enforcement mechanisms developed in New York will be effective in practice. We base this predictive judgment on the fact that the plan has the following important characteristics:
>
> - potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;
> - clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;
> - a reasonable structure that is designed to detect and sanction poor performance when it occurs;
> - a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal;
> - and reasonable assurances that the reported data is accurate.[66]

WorldCom has outlined the elements of an effective enforcement plan in Appendix B, attached hereto.

E. CLECs Should Not Be Subject to Reporting Obligations

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[65] WorldCom is willing to consider an offset mechanism to prevent against the ILECs paying for the same violation twice.
[66] NY 271 Order at ¶¶ 432-433.

The performance measurements, standards and remedies adopted or recommended in this proceeding should not apply to CLECs. Performance measurements, standards and remedies are for carriers with bottleneck local facilities—not competitive carriers. In enacting the Telecommunications Act of 1996, Congress recognized incumbents' dominant control of local networks and placed interconnection and unbundling obligations set forth in Section 251(c) only on incumbent local exchange carriers. In addition, competitive local exchange carriers do not have to satisfy the section 271 checklist obligations relating to nondiscriminatory access to unbundled network elements, including OSS.

Verizon argues that CLECs should report on orders cancelled after the due date is missed and misdirected trouble tickets but provides no justification for its request.[67] Similarly, SBC proposes that the Commission apply a firm order confirmation measure to all carriers, including CLECs.[68] WorldCom agrees with AT&T, XO, McLeod, and Focal that it is not necessary for competitors to report on these or any other performance measurements because competitors lack the opportunity to discriminate.[69]

The Michigan State Public Service Commission has already studied this issue and rejected the notion that CLECs should be subject to reporting requirements. The Michigan PSC stated:

> The purpose of adopting performance measurements and standards is to provide a basis upon which the Commission may determine whether the ILECs that are subject to those sections [47 USC 251(c) and Michigan law] have met their obligations to provide interconnection, resold services, and unbundled network elements in a nondiscriminatory manner. As noted earlier, the task is necessary because ILECs have both the incentive and the

[67] Verizon Comments at p. 68.
[68] SBC Comments at p. 30.
[69] *See* AT&T Comments at p. 37-38; XO Comments at pp. 24-26; McLeod Comments at p. 10; Focal Comments at p. 37.

> ability to impair a CLEC's ability to compete by providing less than parity in service and products offered to competing providers. CLECs, on the other hand, do not occupy a position in which they might easily impair the development of a competitive market. The Commission therefore concludes that performance measurements adopted in this order should not be imposed at this time on those providers that are not bound by 47 USC 251(c).[70]

The Commission should follow Michigan's lead and only oppose reporting obligations on incumbent local exchange carriers.[71]

The ILECs' goal in raising the issue of reciprocity is to encumber new competitors with reporting obligations. The ILECs have been very successful in making market entry a slow gradual process—the profits they have retained off of customers reluctant to make a move to a new competitor after experiencing or even hearing about botched first attempts is incalculable.

There may be some areas where competitors need to exchange information with ILECs and other CLECs to migrate customers to a new service provider. States have been addressing these intercarrier functions in separate proceedings outside of the performance measurements dockets. While these proceedings often produce standard intervals for providing CSRs, the states have not imposed reporting requirements on new entrants. Notably, the CLECs are able to work out these CSR exchanges without demanding reporting obligations of one another.

There is no support in the record for the Commission to require that competitive

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70 In the Matter of Ameritech Michigan's Submission on Performance Measures, Reporting and Benchmarks, Pursuant to the October 2, 1998 Order in Case No. U-11654, dated May 27, 1999, Case No. U-11830 at p. 39.

71 To the extent that the Commission is considering imposing requirements on competitors to monitor service quality, it should let the complaint process serve to enforce end user service quality rules. Moreover, imposing reciprocal requirements on CLECs to improve end-user service quality is putting the cart before the horse. CLECs must have the intervals set for their many dependencies on ILECs before they can meet end-user commitments. ILECs, on the other hand, are not dependent on CLECs to meet their end user demands or commitments.

local exchange carriers report on their monthly performance in delivering services to other carriers and end users. Therefore, the Commission should reject SBC and Verizon's proposals to have competitors' performance subject to reporting obligations that serve no competitive benefit.

III. THE MEASUREMENTS PROPOSED BY SBC, VERIZON AND BELLSOUTH ARE NOT ADEQUATE TO EVALUATE ILEC WHOLESALE PERFORMANCE

Among the Bell Companies little consensus exists regarding national metrics, except that there should be few. The Commission proposed a sparse list of performance metrics for comment, yet Bell companies disagreed even between themselves on that skeletal list. It is worth noting that at the state level, the Bell Companies participated with CLECs in developing, and often agreeing voluntarily to, the thorough list of metrics they now denounce.

Only Qwest stands by its work in state collaboratives to develop metrics addressing the market issues and challenges facing competitors. Qwest urges the Commission to leave undisturbed the work undertaken by state commissions, and includes a chart whereby Qwest measures by its count 857 PMs, including product and geographic disaggregation.

WorldCom agrees with Qwest: "Any effort by the Commission to preempt state PAP [performance assurance plans] would be premature, have the potential to disrupt these important negotiations and create comity concerns between the Commission and the states."[72] Further, WorldCom agrees with Qwest that "For so long as UNEs exist and ILECs are required to unbundle them under Section 251 of the Telecommunications Act

[72] Qwest Comments at p. 3.

of 1996 ("1996 Act"), and the states' actions are consistent with the 1996 Act, the Commission should defer to the states."[73]

SBC, Verizon and BellSouth's views on key metrics focus less on the adequacy of their metrics and more on a desire to reduce state oversight and replace it with minimal federal oversight. Their choice in measures represent what would be easiest for them to report rather on what their customers want them to report. This is proof in of itself that business table negotiations will not produce adequate assurance of ILEC service quality. The ILECs offer little argument to support their claims as to why only specific measurements should be adopted. In fact, WorldCom would have at least expected the Bell Companies to tout their compliance with the existing state measures. Rather, to point out the burdensome nature of the state plans, the BOCs took the number of metrics and sub-metrics under which they report and multiplied them by the number of states in which they operate. In addition, the minimal national measurements they propose are not sufficient to enable the Commission to achieve the goal set forth in the NPRM: to determine "whether an incumbent LEC has provided just, reasonable and nondiscriminatory service *in any given situation*."[74]

A. Pre-Order Metrics

In suggesting a single pre-order measurement, Verizon opposes a Pre-Order Interface Response Timeliness Metric, arguing the commission should instead measure the availability of ILECs' OSS interfaces.[75] SBC, on the other hand, endorses a Pre-Order Response Time Metric, so long as it is similar to Percent Pre-Order Responses

[73] *Id.* at p. 4.
[74] NPRM at ¶ 3 (emphasis added).
[75] Verizon Comments at Appendix A-2.

Received within the Specified Interval.[76] BellSouth agrees with SBC that Pre-Order Response Time should be measured, but that the metric should be of the Average Interval for Each Query Type.[77]

WorldCom's proposed metrics, Percent System Availability and Query Response Timeliness/Percent Ordering/Preordering System/Error/Timeouts, address the important issues of speed and accessibility. The Commission should not make CLECs chose between a measurement of whether the ILEC's ordering and pre-ordering interfaces are running and a measurement of how quickly the ILECs return desired responses when they are running. Both measurements are equally important, and just having one of them will serve no purpose. A system could provide responses rapidly when it is up, but could be down half of the prime time hours. Moreover, a system could be running 24 x 7, yet produce query responses and error messages that would make filling out an order with the customer on the line unworkable. As Verizon points out, "Even if an ILEC's pre-order response timeliness metric is at parity, CLECs' ability to complete effectively can be compromised if those interfaces are available substantially less often for CLECs than for the ILEC."[78]

B. Order Status Metrics

REJECS: Only BellSouth includes a measurement of the order rejection interval. Verizon and SBC try to argue that such notices are of no value to CLECs at all. They are sorely mistaken. A quicker response time on a rejection is even more critical than on a confirmation notice as this begins the CLECs race to: (1) correct what the reject code tells it that it has done wrong; or (2) question unclear or disputed error messages at

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[76] SBC Comments at p. 12.
[77] BellSouth Comments at ¶ 66.

the ILEC's help desk. WorldCom uses the word "race" because the time involved in tracking down rejections is critical to preserving the standard interval for the customer. SBC, Verizon, BellSouth and Qwest all report reject intervals today so including it in the national list of measurements will not be a problem for any of them.[79]

COMPLETION NOTICES: The Bell Companies disagree on which completion notices are most critical to competitors. SBC argues that the provisioning completion notice and not the billing completion notice should be the only completion notice that the FCC measures, while Verizon proposes that the Commission adopt a billing completion notice over a provisioning completion notice. BellSouth joins SBC in the provisioning completion notice camp. SBC's and BellSouth's metric choice is most likely influenced by the fact that neither (except for SBC's Pacific Bell territory) provides a billing completion notice today. However, both SBC and BellSouth have requests for such notices languishing in their change control processes.

If the ILECs could design one completion notice that is sent shortly after physical work completion and causes the ILEC's billing of the end-user customer to cease and the customer's CSR to be updated, CLECs could live with just one notice metric. Unfortunately, ILECs cannot seem to measure this interval end-to-end without leaving unmeasured gaps in time, which is something that WorldCom has experienced first hand with SBC, Verizon and BellSouth. Therefore, both a provisioning and a billing

[78] Verizon Comments at Appendix A-2.

[79] Allegiance proposes a metric that WorldCom does not include on the frequency of rejects on the same order. While WorldCom agrees with Allegiance that a problem exists with the ILECs only returning one reject at a time on each order, WorldCom would prefer that the FCC direct the ILECs to adjust ordering systems to reject for all errors on the LSR at once to speed the time involved in achieving a successful order. Sometimes a process change can avoid the need for a metric.

completion notice is needed to mark when the customer is in the CLEC's control to manage service problems and to avoid double billing.

ORDER ACCURACY: BellSouth is the only ILEC to offer any metric beyond the minimum order measurements proposed in the NPRM. BellSouth correctly proposes an Order Accuracy measurement, which WorldCom included in its list of national measurements. Two critical measurements not included in the BOCs' proposed metrics relate to: 1) the receipt of timely and accurate loss notification; and 2) the receipt of timely responses from CLEC ordering centers. WorldCom's Percent Timely Loss Notifications and CLEC Center Responses in X Days address critical issues that affect our daily Mass Markets operation. The incumbents' performance in these areas is directly related to our ability to provide efficient service to our customers.

FLOW THROUGH: Despite the existence of state flow through measures, none of the Bell Companies propose to measure flow through. As WorldCom pointed out in its comments, flow through performance has been emphasized by the Commission in the past and directly relates to a competitors ability to serve commercial volumes of consumer orders.[80]

C. Provisioning Measurements

DELAY DAYS: Verizon discounts the Commission's proposed Average Delay Days on Missed Installation Orders measure as not particularly critical to a carrier's ability to compete effectively.[81] Verizon downplays the measure as unnecessary when a plan also includes a Percentage On Time Performance/Missed Appointments measurement, because Verizon claims that "there can be no delay days unless an ILEC

[80] WorldCom Comments at pp. 15-17, 41-42.
[81] Verizon Comments at p. A-16.

misses an appointment."[82] Verizon is wrong. A vendor could easily discriminate against its competitors by holding CLEC orders longer than its retail orders before completion.

SBC, on the other hand, acknowledges the merit of a delay day measurement, noting that it "could provide additional information relevant to assessing the extent to which an ILEC meets its non-discrimination obligations under section 251."[83] WorldCom did not propose an average delay day metric, but instead proposed an Average Order Completion Interval measurement to measure whether orders requesting the standard interval were completed within the standard interval. For orders where CLECs seek longer than the standard interval, WorldCom believes its Percentage of Held Orders metric (including uncompleted orders with or without committed due dates) would pick of the problems of orders held for excessively long periods of time.[84]

JEOPARDY NOTICES: Only BellSouth agrees with CLECs that "it is important for customers of both CLECs and ILECs to receive notice that an appointment will be missed."[85] Conversely, Verizon and SBC balk at the FCC's suggestion of such a metric. Every ILEC except Verizon provides a jeopardy notice metric and most even two (a Percent jeopardies and Jeopardy Interval).

WorldCom's jeopardy metric captures how often jeopardizes were received more than 48 hours and less than 24 hours before the due date is missed. WorldCom would expect parity in the degrees of advance notice it receives compared to retail customers for

[82] Verizon Comments at p. A-17.
[83] SBC Comments at p. 19.
[84] WorldCom did agree recently in the New York Carrier-to-Carrier proceeding to allow Verizon to do away with average interval metrics, so long as it would provide data upon request of the Working Group for reviews of the benchmarks of certain metrics. The elimination would not have occurred if VZ did not also provide an Offered Interval metric to show whether CLECs requesting the standard interval for a product receive that interval and an Open Orders in Hold Status Metric, which includes orders that have and have not received confirmations.
[85] BellSouth Comments at p. 40.

missed appointment. But it is most often inclined toward a benchmark for the percent of Missed Appointments that receive jeopardy notices. The New York Carrier Working Group eliminated Verizon's EELs Percent Jeopardy Notice metric that it never really implemented in the first place, but it was not because the PSC and collaborating CLECs do not believe jeopardies are important. CLECs plan to be working on jeopardy metrics this year, now that Verizon is providing electronic notices, as the NY PSC requires the issuance of jeopardy notices when appointments will be missed.

COORDINATED CONVERSIONS: None of the BOCs' proposed to include a measurement of coordinated conversions with local number portability. While some ILECs have improved their hot cut performance, it is still an important measure to include, as the ILECs' performance impacts the competitors' relationship with its new customer. Even though AT&T proposed that the FCC should use the state adopted metrics, it did press for the FCC's mandate of improved benchmarks for on-time hot cut delivery and service restoral after ILEC caused problems.[86] While every Bell Company has state hot cut performance metrics, none proposed to include such measurements in the federal plan, not even as a disaggregation of Percent Missed Appointments or a Mean Time to Restore.

D. Maintenance & Repair Metrics

WorldCom is concerned about many of the business rules proposed by the BOCs and their measurement calculations for trouble reporting. After it makes is decision on the specific national list of measures, the FCC may want to establish workshops to review and improve business rules. SBC, Verizon and BellSouth all propose excluding

[86] *See* AT&T Comments at p. 9.

NTF/FOK/TOK/CPE coded troubles from the plan.[87] WorldCom is concerned that this may provide an incentive for ILEC workers to miscode troubles to exclude them from the plans. CLECs are concerned about coding errors that occur both non-intentionally and intentionally. The Communications Workers of America's report to the New York Commission, attached hereto as Appendix C, describes how managers have asked workers to miscode such troubles.[88] The ILECs feel that including troubles closed to such codes will provide an incentive for CLECs to misreport troubles.

CLECs have no incentive to open false trouble reports. If the BOCs are concerned with the potential for abuse by the CLECs of the trouble reporting process, such coded troubles could be reported separately for a period of time to monitor the volumes on the retail or wholesale side. If the FCC does decide to recommend exclusion of these coded troubles, it should require incumbents to continue reporting the number of such excluded troubles so that CLECs are alerted to seek the raw data if exclusions seem unusually high in a month. Also if exclusion is allowed, the Percent Repeat Trouble metric should include any occurrence with a repeat trouble where the first trouble where the first occurrence is an excluded code, as likely the code was erroneous.

TROUBLE REPORT RATE: Disagreement exists among SBC, Verizon and BellSouth about the proposed Trouble Report Rate metric. SBC agrees "this measure is potentially useful insofar as it would enable CLECs to determine on an ongoing basis whether their customers experience more incidents of trouble than ILEC end users."[89] BellSouth also proposes a Customer Trouble Rate metric. Verizon, on the other hand,

[87] SBC Comments at p. 26; Verizon Comments at p. 61; BellSouth Comments at p. 52.
[88] *See* Service Quality & Service Quality Reporting At Verizon-NY, attached hereto as Appendix C at pp. 11-12.
[89] SBC Comments at p. 24.

declares that the Commission should not adopt such a measure.[90] As WorldCom articulated in its comments, we believe Mean Time to Restore (#19), Trouble Report Rate (#20), Percent Repeat Troubles (#21), and Troubles Within 30 Days of Install/Order Activity (#18) should all be included in a metrics-monitoring plan.[91]

To avoid double counting, WorldCom would not be opposed to excluding the first of the repeat troubles included in Troubles Within 30 Days of Install/Order Activity metric from the Trouble Rate and Repeat Trouble metrics, respectively. However, the Trouble Rate and Repeat Trouble metrics reflect different problems and should not offset one another. The Trouble Rate metric looks at troubles per installed base to assess the quality of facilities CLECs are being provided overall compared to ILECs; the Repeat Trouble Rate examines the repair quality, and Troubles Within 30 Days of Install/Order Activity examines installation Quality. Both of these latter metrics use total troubles reported in the denominator.

Further, the and Troubles Within 30 Days of Install/Order Activity should cover a 30 Day period, not 5 days as proposed by BellSouth. Five days is two short a period to capture the full time period for back-and-forth that can occur between the ILEC and CLEC in gaining final resolution of a poor quality installation. Amazingly, with all the ILEC claims that only customer-impacting metrics should be measured, none has proposed a Percent Customer Troubles Resolved in Estimated Time metric, as WorldCom has proposed (#22).[92] Nothing can ruin a customer relationship more than when repair commitments are not met. The Time to Restore metric included in the NPRM does not measure the same problem area that WorldCom's proposed Percent

[90] Verizon Comments at p. A-26.
[91] WorldCom Comments at pp. 51-55.

Customer Troubles Resolved in Estimated Time measure captures. The Time to Restore measure does not capture the harm caused by missed repair commitments.

Disagreement exists even with the Time to Restore metric. Verizon says the measure should be report the average time "from when a problem is reported to [the ILEC] to the time when [the ILEC] returns a trouble ticket resolution notification" to the CLEC.[93] SBC, however, says the appropriate end of the interval is the time at which the trouble has been resolved and the service restored.[94] Verizon's approach is closer to WorldCom's preference and allows the CLEC to act more promptly if it believes the trouble was not resolved.

E. Billing Metrics

Only Verizon proposes to include a billing measurement in the national plan. Verizon explains that the Timeliness of Carrier Bills is a critical billing metric:

> Although state commissions have adopted multiple measurements of billing performance—such as billing accuracy or timeliness of responding to billing complaints—whether the ILECs performance on those other measures is competitively significant depends, in large part, on whether the CLECs received their wholesale bill in a timely fashion. The most accurate bills and the most prompt dispute resolution process will be of less use if they receive their wholesale bills weeks or months late.[95]

SBC takes the polar opposite position, arguing that when ILECs' bill CLECs late, the cash flow positions of the CLECs are improved.[96] This is just another example of SBC's ignorance of the competitive marketplace. As WorldCom explained in its

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92 *See* WorldCom Comments at pp. 54-55.
93 Verizon Comments at p. A-31.
94 SBC Comments at p. 27.
95 Verizon Comments at p. A-33.
96 SBC Comments at p. 31.

comments, CLECs need both invoice and usage feed timeliness measurements.[97] Moreover, it is important for regulators to measure how quickly ILECs respond to billing errors.[98]

As WorldCom's Timeliness of Carrier Invoice measure (#28) notes, the bill should be transmitted within 10 days of the invoice date unless the ILEC gives the CLEC 30 days to pay no matter when the bill is received. The floating 30 days is almost never the case, so even very late bills are due to be paid at the end of the month. Similarly, DUF accuracy is important information necessary for competitors to bill their customers in a timely manner. Formatting errors prevent the CLEC from receiving any usage at all, let alone incomplete usage. Late bills put strains on CLEC accounting and auditing resources. CLECs tend to find mistakes in ILEC bills more frequently than the ILECs, therefore a Billing Errors Corrected in X Days measure (WorldCom #29(b)) is preferred over the standard order accuracy metrics adopted by most states.

F. Change Management

Neither SBC, Verizon nor BellSouth proposed a change control metric of any kind. WorldCom's comments elaborated in great detail on the importance of change management.[99] The timely release of change control notices and documentation are critical to competition. Moreover, the prompt correction of software problems caused by ILECs can be as beneficial to competition as a quick repair to disruptions in the network.

G. Collocation and Network Performance

[97] WorldCom Comments at pp. 58-59.
[98] WorldCom Comments at p. 59 (discussing WorldCom measures #29(a) and (b) relating to billing error corrections).
[99] WorldCom Comments at pp. 12-14, 35-38.

For all their claims that the FCC should foster facilities-based competition, SBC, Verizon and BellSouth conspicuously omit any trunking or collocation metrics from their proposals. As WorldCom outlined in its comments, the network performance measures proposed by WorldCom (#23 Percent Trunk Blockage, #24 Percent Timely Collocation Responses, #25 Percent Collocation Intervals Met, and #26 NXX Loading) are essential to any national measurement plan.[100]

IV. CONCLUSION

The record is clear: no state and no competitive carrier wants the Commission to adopt federal measurements that preempt the strong state measures. Rather, the states and competitors support the adoption of comprehensive federal measurements and standards that serve as a baseline that the states may exceed. WorldCom's proposed measurements and standards represent the "best of the best" state metrics and reflect our actual experience in the market. The Commission should adopt WorldCom's proposed measurements and standards as the minimum national measures applicable to all ILECs.

Respectfully submitted,

/s/

Kimberly Scardino
Lisa Youngers
Karen Reidy
WorldCom, Inc.
1133 19th Street, NW
Washington, D.C. 20036
(202) 736-6478 (voice)
(202) 736-6492 (fax)
Kimberly.Scardino@wcom.com

[100] WorldCom Comments at pp. 55-58.

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